THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 11951 OF 1999

20th September, 2005

Between:

M/s Dhanalaxmi Co-op. Housing Society,

Rep. By its Secretary Office Plot No. 31-A,

Eswari Housing Colony, Kushaiguda,

R.R. District. …Petitioner

A N D

1. The Principal Secretary, Revenue Department,

Govt. of A.P. Secretariat, Hyderabad and Others

…Respondents

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W.P.No. 11951 OF 1999

ORDER:

1. The petitioner is a housing society registered under Andhra Pradesh Co-operative Societies Act 7 of 1964. Smt. P. Sarojini Naidu executed an agreement of sale in favour of petitioner society on 18-1-1982 in respect of Ac. 1-28 gts comprising

Survey No. 470, situated at Kapra village, Ranga Reddy District. The price settled for the land is Rs. 34,375/- @ Rs. 5/- per square meters for 6875 meters. The petitioner society undertook to obtain the Urban Ceiling clearance certificate from the competent authority. Land holder-Smt. P.Sarojini Naidu filed declaration under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976. The Special Officer and Competent Authority by order dated 13-7-1978 found the landholder-Smt. P.Sarojini Naidu holding an extent of 6868.77 meters of land in excess of the ceiling limit. The Government of Andhra Pradesh granted exemption to vacant lands held by excess landholders proposed to be transferred to Co-operative Housing Societies or Group Co-operative Housing Societies. Certain guidelines have been issued for processing exemption petition under Section 20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 vide G.O.Ms. No. 964, dated 21-6-1993. The landholder- Smt. P.Sarojini Naidu submitted application to the Government for exemption of land admeasuring 6868.77 square meters from the provisions of Urban Land (Ceiling and Regulation) Act, 1976. The application filed by the landholder came to be rejected under Memo No. 243/UC.II/82-4, dated 2-12-1983. The landholder-Smt. P.Sarojini Naidu submitted letter to the Special Officer Urban Land Ceiling giving consent to surrender the lands in Survey No. 470 to the extent of 6875 square meters and sought for compensation. The letter addressed to the Special Officer reads as follows:

> "*Sir,*
>
> *With reference to your letter No. G17870/76, dated 27-12-1983 I am herewith giving my consent to surrender the land in Survey No. 470 (P) to the extent of 6875 sq. meters.*
>
> *I request you to kindly compensate the amount payable to me, at an early date, for which I will be highly thankful to you.*
>
> *Thanking you Sir,*
>
> *Yours faithfully,*
>
> *Date : 22-2-1984*
>
> *Place : Habshiguda,*
>
> *Hyderabad (P. Sarojini Naidu)"*

2. She had also enclosed the consent letter in the form of an affidavit. The consent letter reads as follows:

> *"I, Smt. P. Sarojini Naidu, W/o late P. Swamy Naidu, aged 45 years, resident of D.No. 12-5-33/1, Tarnaka, Hyderabad owner of land bearing Survey No. 470 (P) admeasuring 1 acre 28 guntas situated at Kapra village, Ranga Reddy District, is willing to sell the above said land to the Dhanalakshmi Co-operative Housing Society, Kapra village, ranga Reddy District "*

3. There is another letter dated 3-4-1982 from the landholder-Smt.P.Sarojini Naidu addressed to the Special Officer and competent authority Urban Land Ceiling where under she accepted the finding recorded by the Special Officer and Competent Authority. The letter dated 3-4-1982 reads as follows:

> "*Sir,*
>
> *Sub: Urban Land (Ceiling & Regulation) Act, 1976 – Hyd. Urban Agglomeration – Statement in Form-I u/s 6(1) of the Act filed by Smt. P. Sarojini Naidu w/o P. Swamy Naidu – Orders u/s 8(4) issued – Regarding.*
>
> *Ref: 1. Statement in form-I u/s 6(1) of the Act filed by Smt. P. Sarojini Naidu in C.C.No. 01/7870/76.*
>
> *2. This office Progs. No. G1/7870/76, dt. 15-7-78.*
>
> *3. Written statement filed by Smt. P. Sarojini Naidu, dt. 20-7-78.*
>
> *4. Agreement of sale with M/s Dhanalaxmi co-op. Housing Society in terms of G.O.Ms. No. 136 Revenue (UC.II) Dept. , dated 28-1-1981.*
>
> *…..*
>
> *Kindly refer to your C.C.No.01/7870/76, dt. 29-5-1982 on the above subject declaring 6878.77 mtrs., vacant land in Sy.No. 459, 460, 461 & 470 as surplus.*
>
> *The findings informed as above is acceptable to me and now I request you to issue suitable orders so as to proceed further in respect of the agreement of sale entered by me with M/s Dhanalaxmi Co-op. Housing Society (TAB No. 441) in terms of G.O.Ms. No.136 Revenue (UC.ii) Department dated 28-1-1981.*
>
> *Shall be much grateful for your immediate compliance.*

Thanking you,

Yours faithfully

Hyderabad.

Date: 3/4/1982 (P. Sarojini Naidu) "

4. The Government has also instructed to hand over the possession of the excess land to HUDA for making lay out and allotment of the plots to the genuine members of the petitioner society. HUDA granted lay out Plan and communicated the lay out plan to the Commissioner, Kapra Municipality. Surplus land has been made into 18 plots. The Urban Development Authority issued allotment letters to 16 members of the petitioner society on payment of Rs. 5/- per square meters. The members were directed under proceeding No. EMU/A3/6427/84, dated 12-12-1984 to deposit the cost of the plot @ Rs. 6,100/- each before 31-12-1984. Out of 16 members, only 14 members remitted the amount. The Commissioner, Kapra Municipality, Ranga Reddy District released the final lay out under Proceeding No. A4/1918/90-91, dated 21-8-1993. Thereafter, the petitioner society executed a gift deed dated 4-8-1993 in respect of common areas in favour of Kapra Municipality. According to the petitioner society, due to delay in execution of the conveyance deed some of the members were constrained to withdraw their membership and thereby 4 plots became vacant and accordingly, the petitioner society has recommended for allotment of the said four plots to 1) Bujjaiah, 2) T.G. shashidhar, 3) Vijayaraj and 4) Smt. Sabita. The petitioner society has been requesting the Urban Land Ceiling authorities as well as Urban Development Authority for registering the plots in favour of its members. Since, the request of the petitioner society has not been complied with either by the Urban Land Ceiling Authorities or by the Hyderabad Urban Development Authority, it chooses to approach this Court by invoking jurisdiction under Article 226 of the Constitution of India with the following relief:-

> *"For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court maybe pleased to issue a writ or direction more so in the nature of writ of mandamus directing the respondents to execute register the conveyance deed in respect of the plots allotted and pass such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case".*

5. V.Tara Shankar, one of the members and Ex-President of the Petitioner's Society filed WPMP No. 18970 of 2001 to come on record as a party respondent. The said petition came to be allowed on 6-6-2002 and accordingly, he came on record as 5th respondent.

6. One S. Sambasiva Rao filed WPMP 28082 of 2002 claiming to be the member of the society. The said application came to be allowed on 14-11-2002 and he came on record as 6th respondent in the writ petition.

7. Smt. P. Sarojini Naidu-landholder filed W.P.M.P.No. 17064 of 2004 to come on record as party respondent in the writ petition. The said applicationcame to be allowed on 3-9-2004 permitting her to come on record as 7th respondent.

8 . Respondents 1 to 3 filed counter affidavit. One N.S.Hariharan Special Chief Secretary to Government, Revenue Department, has sworn to the counter affidavit. It is stated in the counter affidavit that a detailed counter affidavit has been filed in W.P.No. 1181 of 2002 and the same may be treated as part of counter affidavit in this writ petition also. It is pertinent to note para 3 of the counter affidavit filed in W.P.No.1181 of 2002 and it is thus:

> *"With reference to para-2, it is submitted that it is true the Government has considered the application of the land owner Smt. P. Sarojini Naidu for exemption of excess land in Sy. No. 740, so as to alienate the land in favour of Dhanalakshmi Co.operative Housing Society Ltd. as per the agreement dated 5-8-1980 and for allotment to its 19 members in the light of the guidelines issued in G.O.Ms. No. 964, dated 27-4-1983. (The copy of the G.O. is filed herewith as Annexure No.1). The Government further issued instructions in Memo No. 243/UC.II/82-4, dated 2-12-1983 to take further action as per the guidelines formulated in G.O.Ms. No. 964, dated 27-4-1983. (The copy of the Memo is filed herewith as Annexure No.2). The Government has also instructed to hand over possession of the excess land to HUDA for making layouts and plots and for allotment of the plots to the genuine members of the Dhanalakshmi Co.Operatie Housing Society Ltd. The list of the 19 members of the Society was also appended and the convenor of the allotment committee was requested to finalise the allotment of house sites to the genuine members by causing such enquiry as may be necessary to determine the*

eligibility of the members of the Society for allotment of house sites".

9. The counter affidavit of respondents 5 and 6 shows that they are concerned with the remaining vacant four plots. Except that, they did not seriously oppose the prayer sought for by the petitioners in the writ petition. To know their grievance precisely, it is suffice to refer para 3 of the counter affidavit and it is thus:

> *"I further submit that one Mr. N.Vijaya Raju filed the present Writ Petition on behalf fo the Society claiming to be the Secretary of the Society, and seeking a direction for execution of the registered conveyance deeds in respect of those to whom plots are allotted and further contendindg that 4 plots have been allotted to 4 persons including him and whose names are mentioned in the affidavit, alleging that they have been inducted as the members of the society in place of those who committed default and those whose allotment did not take place. The said person is not even a member of the society at any point of time and he cannot claim to represent the society as its Secretary. The said person having regard to the fact that the Society has been defunct, seem to be claiming himself to be the Secretary and wants 4 plots to be allotted to his nominees".*

10. The 7th respondent has filed counter affidavit. The General Power of Attorney holder of the 7th respondent has sworn to the counter affidavit. The counter affidavit in brief is that the landholder entered into an agreement of sale on 31-1-1981 with the Petitioner society and she has also submitted application for exemption of land under Section 20(1) r/w G.O.Ms.No. 136 Revenue (UC-II) department, dated 28-1-1981 and the exemption sought for has been rejected by the Government. The landholder addressed a letter to HUDA bringing to the notice of Vice Chairman that the petitioner society has not complied with the terms and conditions of agreement of sale and therefore, layout application is to be rejected. The Vice Chairman of HUDA in turn addressed a letter to the petitioner society bringing to notice of the society the request made by the landholder and sought explanation from the petitioner society. The landholder submitted an application before the Special Officer and competent authority on 20-2-1990 to grant exemption under G.O.Ms. No.733 and she submitted several reminders thereafter. Aggrieved by the in action of the Special Officer and

competent authority, the landholder filed appeal before the Commissioner, Land Reforms, under Section 33 of the Act and the appellate authority granted status quo order. The rights of the petitioner society depend upon the out come of the appeal filed by the landlord. She filed an application before the appellate authority to bring on record the petitioner society as party respondent. The appellate Authority ordered notice to the proposed party on 1.7.1995.

11. Heard the learned counsel for the petitioner society, learned Government Pleader appearing for Respondents No. 1 to 3, learned Standing counsel appearing for Respondents 4, learned counsel appearing for respondent No.5 and 6 and learned counsel appearing for respondent No.7.

12. The learned counsel appearing for the petitioner's society submits that members of the petitioner society have paid price to the Urban Development Authority and therefore, the members of petitioner society are entitled to have conveyance deeds executed by either the Urban Land Ceiling Authorities or the Urban Development Authority. He further submits that the Urban Development Authority-4th respondent having received the price of the plots is under an obligation to execute conveyance deed in favour of the each of the members to whom plot is allotted. His further submission is that the action of the society in filing the writ petition has been ratified by the present Managing Committee of the Society and therefore, there is no infirmity in filing the writ petition by the erstwhile managing committee in the year 1999. He placed on record the extract of minutes of the Managing Committee of the petitioners society held on 14-8-2005. One K. Balagangadharam has sworn to the affidavit filed along with extracts of the minutes of the meeting and it reads that he has been elected as President of the petitioner society on 10-1-2002 and his tenure is upto 9-1-2007. The resolution passed by the Managing Committee of the petitioner society on 14-8-2005 reads as follows:

> "*We hereby resolve to ratify the act of the earlier Managing Committee to file WP No. 11951 of 1999 before the Hon'ble High Court seeking to the mandamus of the Govt. of A.P. and others to execute the Conveyance deed in favour of the allottees of Survey No.470, Kapra village and we further authorize our President Shri K. Balagangadharan to represent the society in the above Writ Petition and also in the connected W.Ps No.1181 of 2002 and WP 9670 of 2004".*

13. Respondents 5 and 6 though raised dispute with regard to competency of the Secretary who has filed the writ petition on behalf of the petitioner society do not choose to oppose the prayer sought for in the writ petition. Therefore, their contentions need not be elaborated in the writ petition.

14. The learned Senior Counsel appearing for the 7th respondent submits that petitioner-society is not entitled to any relief in the writ petition since the appeal filed by the landholder-7th respondent is pending before the appellate authority and any orders passed in favour of the petitioner-society in the writ petition may prejudice the case of the landholder pending before the appellate authority. He further submits that the society has become defunct much prior to 1999 and therefore, no proceedings could be initiated on behalf of the defunct society. Yet another submission has been made by the learned counsel that since the proceedings under Chapter-III of the Urban Land Ceiling Act has not been completed, the land holder-7th respondent is entitled to claim exemption granted under G.O.Ms. No.733. In support of his submissions, reliance has been placed on the decisions of our High Court in ***Katya Co-op. Building Society Limited Vs. The Govt. of A.P.*** in ***State of A.P. rep. By Secretary to Govt. Revenue Department, Hyderabad Vs. Valluru Venkateswara Rao,*** in ***P.S.Rao Vs. Special Officer & competent Authority, Urban Land Ceilings, Hyderabad,*** and the decisions of Supreme Court in ***Tulsi Co-operative Housing Society, Hyderabad Vs. State of A.P.*** in ***Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad Vs. P.S. Rao,*** in ***Special Officer and Competent Authority, ULC Vs. P.S.Rao.***

15. In the 1st cited decision, a Division Bench of this Court has considered the validity of G.O.Ms.No. 964 dated 27-6-1983. Under the said G.O. the State Government directed that the requests for exemption from the land owners shall be rejected under Section 20 (1) (a) of the Act and the land shall be taken over by the Government under the provisions of Urban Land Ceiling Act and the Urban Land development Authority shall immediately there after make proper lay out and the plots so made shall be first instance allot to the eligible members of the society after verification of the eligibility of the member concerned. For the purpose of carrying out the said direction, the Government constituted a separate committee for each Urban agglomeration of the State. The Division Bench elaborately considered Section 20 of the Urban Land Ceiling Act and has observed as follows: -

"*The Government in issuing G.O.Ms. No. 964, dated 27-6-1983 apparently took into consideration the observations of the Dharma Maha Matra that the guidelines have helped unscrupulous elements to promote societies in collusion with the surplus landholders resulting in generation of black money and promoting corruption and that some middlemen and cooperative housing societies in collusion with the landlords have been indulging in malpractices. The said observations are indeed intended to see that sham house building cooperative societies are not encouraged and not that bon a fide house building societies and their members are discouraged and thereby defeat the very purpose of forming into a cooperative house building society by the weaker sections of the public. It should not be forgotten that cooperation is essentially the outcome of poverty and need and those who voluntarily associate together are poor persons with limited means without any dwelling unit of their own. So bona fide cooperative house building societies ought not to be denied any encouragement. Instead of encouraging thrift and self help, by such wholsesale rejection of applications for exemption by bona fide cooperative house building societies, the very motto of cooperation is struck a fatal blow. G.O.Ms. NO. 964 directs that all requests for exemption from the land owners shall be rejected under Section 20(1) (a) of the Act and the land shall be taken over by the Government under the provisions of the Act. The said direction is totally opposed to the statutory provisions contained in Section 20(1) (a) of the Act. The Government have to consider the bona fides of each application made under Section 20(1) (a) of the Act for grant of exemption and the purpose for which the land is proposed to be used and such other relevant factors as the circumstances of the case may require. But to say that the purpose for which the land is proposed to be used shall not be considered in granting exemption is to defeat the very object of the provision and render the section itself purposeless and functionless. That is what the impugned G.O., in effect mandates and is therefore liable to be struck down".*

16. In the 2nd cited decision a Division Bench of our High Court held that the exemption can be granted under Section 20 of the Urban Land (Ceiling and Regulation) Act. 1976, even after vesting the land to Government under Section 10(3) of the Act.

17. In the 3rd cited decision it has been held that once the statutory authority by exercise of its delegated power framed rules or issued notification exercising power

of exemption, such exemption would form part of statute itself and be implemented from date of statute itself.

18. In the 5th cited decision the Supreme Court has not accepted the contention of the State Government that the application for exemption can be maintained only before the excess is determined under Section 10 of the Urban Land Ceiling Act.

19. This writ petition has been filed on 15-6-1999. The material placed on record shows that the society was in existence as on the date of filing of the writ petition. Under Proceeding No. RC No.256/2001/Ele, the District Collector-District Election Authority appointed Y.Rajender Reddy Co-operative Sub- Registrar/Sub Divisional Co-operative Officer, Chevella, office of Divisional Co-operative Officer, Hyderabad West, as election Officer to conduct election to the President/ Managing Committee of the petitioner-Society Dhanalaxmi Cooperative Housing Society Limited. Under the proceeding dated 21.6.2001 of Deputy Registrar/Divisional Cooperative Officer, Hyderabad west zone, Ranga Reddy District. M.Satyanarayana Goud, Cooperative Sub-Registrar/ Special Divisonal Cooperative Officer, Medchal has been appointed as official PIC to look after the affairs of the petitioner society for a period of three months or till the elections are held and newly elected committee assume the charge whichever is earlier.

20. A fact remains that election has been held on 10-1-2002 and one K. Balagangadharam has been elected as President. The Managing Committee passed resolution on 14-8-2005 ratifying the action of the earlier managing committee in filing W.P.Nos.11951 of 1999, 1181/2002 and 9670 of 2004. Under bye-laws of the petitioner society the Secretary/President shall be the Officer to sue or be sued on behalf of the society vide 29(d) of the bye-laws of the petitioner society. The writ petition is filed by the Secretary of the Society. In that view of the matter, it cannot be said that the writ petition is not properly instituted.

21. It is no more in dispute that 7th respondent executed agreement of sale in favour of the petitioner society on 28-1-1981. The landholder-7th respondent also addressed letter to the Special Officer and Competent Authority Urban Land Ceiling accepting the orders issued under Section 8(4) of the Urban Land Ceiling Act. It has also come on record that the 7th respondent has requested the competent authority

to pay the compensation for the excess lands which were sold to petitioner society under an agreement of sale. The stand of the landholder-7th respondent is that the petitioner society has committed breach of the terms of the condition of agreement of sale and therefore, she is no more under an obligation to abide by the terms of the agreement of sale. A serious contention has been advanced by the learned counsel appearing for the 7th respondent that in view of the pendency of appeal filed by the 7th respondent before the appellate authority under Urban Land Ceiling Act to modify the orders passed under Section 8(4) of the Act, the writ petition is premature and therefore, the same is liable to be dismissed. What he means to say is that the proceedings under Urban Land Ceiling Authority have not reached finality and therefore, there is no vesting of surplus land with the Urban Development authorities in which case the Urban Development Authority is not competent to execute the registered sale deeds. It appears the landholder-7th respondent filed an application dated 28-2-1990 seeking modification of the final orders passed by the competent authority on 13-7-1978 so as to enable her to claim benefit of exemption under G.O.Ms. No. 733. When no action has been taken by the Special Officer and Competent Authority, there seem to be an appeal filed by the 7th respondent before the Commissioner of Land Reforms under Section 33 of the Urban Land Ceiling Act. As long as on 13-7-1978 the landholder-7th respondent was said to be holding an extent of 6875 square meters of land in excess of the ceiling limit. The landlord-7th respondent did not choose to challenge the orders passed by the Special Officer and Competent Authority till 1990. The issue as to whether the landholder-7th respondent can seek reopening her case so as to claim the benefit allowed under G.O.Ms. No. 733 is not required to be examined since it stands out side of the scope of the writ petition. The prayer of the petitioner-society is very simple and it sought a direction to the authorities to execute deed of conveyance in favour of the members to whom plots have been allotted. The facts narrated above clearly established that 14 members of the petitioner society paid the price fixed by the Urban Development Authority. The Urban Development Authority having received the price of the plots is under obligation to execute conveyance deeds in favour of the members of the petitioner-society.

23. In the result, the writ petition is allowed directing the Urban Development Authority-4th respondent to execute deed of conveyance in favour of the members of

the society who had already paid the price of the plots. No order as to costs.

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B. Seshasayana Reddy, J.

20th September, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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